

REMARKS/ARGUMENTS

This response is timely filed as it is filed within the ONE (1) month shortened statutory period for response to the outstanding Office Action.

No additional claim fee is believed to be due because neither the total number of pending claims nor the number of independent claims is believed to exceed the total number and the number of independent claims, respectively, for which fees have previously been paid. If, however, it is determined that such a fee is properly due as a result of this communication, the Commissioner is hereby authorized to charge payment of such fees or credit any overpayment, associated with this communication, to Deposit Account 19-3550.

10

Election/Restrictions

The application has been alleged to contain claims directed to the following patentably distinct species of the claimed invention:

Species 1: shown in FIG. 1;

Species 2: shown in FIGS. 2 and 3; and

Species 3: shown in FIGS. 4 and 5.

The Action has required, under 35 U.S.C. 121, the election of a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to allowable. The Action further identifies claim 1 as being generic.

Claims 1-26 remain in the application.

The invention of Species 1, shown in FIG. 1, is elected with traverse.

Claims readable on the elected species include claims 1, 4-7, 9-12, 15-17 and 22-26.

In addition, at least claims 1, 4-7, 9-12, 15 and 22-26 are believed to be generic

5 relative to Species 1, 2 and 3.

By the above, the outstanding election of species requirement has been traversed. The Manual of Patent Examining Procedure (MPEP) in section 808 entitled, "Reasons for Insisting Upon Restriction", specifically provides:

Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween as set forth in the following sections.

15 The MPEP, in subsection 808.01(a), entitled "Species", further specifically provides:

A requirement for restriction is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required.

20 [Emphasis added.]

In the present instance and assuming for the sake of argument that the inventions of species 1, 2 and 3 are either independent or distinct from each other, as the Action does not set forth an explanation as to why there would be a serious burden on the Examiner if restriction is not required, the Action fails to set forth the

Serial No.: 10/789,922

prerequisite showing in support of an election of species requirement. In view thereof, reconsideration and withdrawal of the election of species requirement are requested.

Conclusion

5 It is believed that the above elections are properly responsive to the requirements contained in the Action and that the application is in condition for substantive examination. Should the Examiner detect any issue or have any question which might be resolved via a telephone discussion, the Examiner is kindly requested to contact the undersigned by telephone at the (847) 490-1400, in an effort to expedite
10 examination of the application.

Respectfully submitted,


Nick C. Kottis
Registration No. 31,974

Pauley Petersen & Erickson
2800 West Higgins Road; Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403